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Nevada and John Espinoza

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DANIEL SMALL, CAROLYN SMALL,
WILLIAM CURTIN, DAVID COHEN,
LANETTE LAWRENCE, and LOUISE
COLLARD, Individually, and on Behalf of All
Other Persons Similarly Situated,

Plaintiffs,

vs.

UNIVERSITY MEDICAL CENTER OF
SOUTHERN NEVADA; a political
subdivision of Clark County, State of Nevada,
CLARK COUNTY, a political subdivision of
the State of Nevada, and JOHN ESPINOZA,
an individual.

Defendants.

CASE NO. 2-13-cv-0298-APG - PAL

**DEFENDANTS UNIVERSITY MEDICAL
CENTER OF SOUTHERN NEVADA AND
JOHN ESPINOZA'S OPPOSITION TO
PLAINTIFFS' REVISED APPLICATION
FOR COSTS AND ATTORNEYS' FEES**

Defendants University Medical Center of Southern Nevada and John Espinoza
("Defendants"), by and through their attorneys of record, the law firm of Lewis Brisbois Bisgaard
& Smith, LLP, hereby submit this Opposition to Plaintiffs' Revised Application for Costs and
Attorneys' Fees (ECF No. 310).

MEMORANDUM OF POINTS AND AUTHORITIES

In their Revised Application for Costs and Attorneys' Fees (ECF No. 310), Plaintiffs'
counsel seeks \$1,725,643 in fees and \$324,548.33 in costs/expenses allegedly incurred addressing
issues pertaining to Plaintiffs' motion to compel discovery and the Special Master proceedings

that took place in this matter. As set forth below, review of the Revised Application for Costs and Attorneys' Fees reveals rampant overbilling, excessive rates, unnecessary duplication of work and an unbalanced concentration of hours billed by partners for work that should have been performed by associates and paralegals and sometimes for clerical work that should not have been billed at all. Not only are the rates sought by counsel exorbitant, unjustified and unsupported by any evidence to demonstrate that they would be reasonable in this District Court, the sheer number of hours of attorney work claimed to have been necessary and reasonable for the issues identified in Magistrate Judge Leen's Order (ECF No. 307) belie a litigation approach that at best suggests unnecessary duplication of efforts due to there being "too many cooks in the kitchen" and at worst invites speculation of an effort to exploit the circumstances by having multiple counsel working on the same issues in order to blatantly churn fees.

I. The Rates Requested By Plaintiffs' Counsel Are Not Reasonable As They Do Not Reflect The Prevailing Rates In The District Of Nevada.

In their application (ECF No. 310), Plaintiffs' counsel seeks the following rates for attorneys' fees:

Glancy Prongay & Murray, LLC

Marc Godino (Partner) -	\$750/hr
Kara Wolke (Partner) -	\$750/hr
Christopher Fallon (Associate) -	\$525/hr
Elizabeth Gonsiorowski (Associate) -	\$395/hr
Rayo Antonio (Associate) -	\$350/hr
Jack Ligman (Research Analyst) -	\$310/hr
Tia Reiss (Senior Paralegal) -	\$295/hr
Harry Kharadjian (Senior Paralegal) -	\$290/hr
Samantha Skouros (Paralegal) -	\$200/hr
Cameron Sawyer (Paralegal) -	\$180/hr

Tostrud Law Group, P.C.

John Tostrud (Partner) -	\$625/hr
Anthony Carter (Associate) -	\$500/hr

The O'Mara Law Firm, P.C.

David C. O'Mara (Partner) -	\$350/hr
Adrian (Staff) -	\$100/hr
Val Weiss (undisclosed) -	\$100/hr

As noted by this Court, the party seeking fees bears the burden of producing satisfactory evidence to justify the requested rate. *Tallman v. CPS Sec. (USA), Inc.*, 23 F. Supp. 3d 1249, 1257

(D. Nev. 2014), *citing Gonzalez v. City of Maywood*, 729 F.3d 1196, 1206 (9th Cir. 2013). Conveniently ignored by Plaintiffs' counsel in their Revised Application and in the supporting Declarations is controlling authority from the United States Supreme Court and the Ninth Circuit holding that reasonable attorney fees must "be calculated according to the prevailing market rates in the relevant community," considering the fees charged by "lawyers of reasonably comparable skill, experience, and reputation." *Blum v. Stenson*, 465 U.S. 886, 895-96 n. 11 (1984); *Gonzalez*, 729 F.3d at 1205 (quotation omitted). As noted in *Tallman*, the relevant community generally is "the forum in which the district court sits." *Tallman*, 23 F. Supp. 3d at 1257, quoting *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 454 (9th Cir. 2010).

A. Partner Rates

With the exception of Mr. O'Mara, Plaintiffs' counsel have failed to provide any evidence to support a finding by the Court that the partner rates requested in the motion are reasonable for lawyers of reasonably comparable skill, experience, and reputation for a wage and hour class action case in the District of Nevada. Mr. O'Mara, who seeks a rate of \$350/hr, states in his Declaration that this District Court has found his rate to be reasonable in the following cases: *In re Spectrum Pharmaceuticals, Inc., Securities Litigation*, 2:13-cv-00433 (D. Nev) and *IBEW Local 697 Pension Fund v. IGT, et al.*, 3:09-cv-00419 (D. Nev.). See O'Mara Decl., at ¶¶ 9 & 12 (ECF No. 310-3). While neither of the cases cited appears to be wage and hour class action matters, the rate sought by Mr. O'Mara appears to be reasonable based on his years of experience as an attorney in Nevada and the level of expertise described in his Declaration. See O'Mara Decl., at ¶ 17 and Exhibit 2 to O'Mara Decl. (ECF No. 310-3).

However, neither Mr. Godino nor Mr. Tostrud provide similar evidence to support the reasonableness of the rates requested for them or for Ms. Wolke for partner work performed on this matter in the District of Nevada. Other than stating in identically-worded declarations that "[t]he hourly rates shown below are the usual and customary rates set by the firm for each individual" (**Godino Decl., at ¶ 9** (ECF No. 310-1); **Tostrud Decl., at ¶ 9** (ECF No. 310-2)), both Mssrs. Godino and Tostrud fail to provide evidence that the District of Nevada has ever approved the rates they seek (\$750/hr and \$625/hr, respectively) for work in an FLSA class action matter.

1 Mr. Tostrud states in his Declaration that his firm's hourly rates were recently approved in
 2 the Eastern District of Pennsylvania and that "similar hourly rates" (without specifying the actual
 3 rates) were approved for TLG's attorneys (not specifying whether those attorneys were Mr.
 4 Tostrud and/or Mr. Carter), in Los Angeles Superior Court in 2016 and again in the Eastern
 5 District of Pennsylvania in 2013. **Tostrud Decl., at ¶ 12** (ECF No. 310-2). Thus, there is no
 6 evidence provided by Mr. Tostrud to support a finding by this Court that his requested rate of
 7 \$625/hr has ever been approved in the District of Nevada.

8 The same is true for Mr. Godino and his firm. Mr. Godino states in his Declaration that his
 9 firm's "hourly rates"¹ have been approved in class action settlements in the Southern, Central and
 10 Northern Districts of California. **Godino Decl., at ¶ 12** (ECF No. 310-1). As with Mr. Tostrud,
 11 Mr. Godino provides no evidence that such rates for him or other attorneys from GPM have ever
 12 been approved in the District of Nevada. In the absence of any evidence from Plaintiffs' counsel
 13 that the rates they are seeking are reasonable in the District of Nevada, the Court may consider
 14 "the fees awarded by other judges in the same locality in similar cases." *Tallman*, 23 F. Supp. 3d
 15 at 1257, quoting *Moreno v. City of Sacramento*, 534 F.3d 1106, 1115 (9th Cir. 2008); *see also*
 16 *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990) ("[R]ate
 17 determinations in other cases, particularly those setting a rate for the plaintiffs' attorney, are
 18 satisfactory evidence of the prevailing market rate."). As the only evidence of reasonable attorney
 19 rates approved for partners in the District of Nevada comes from Mr. O'Mara's Declaration, it is
 20 Defendant's position that a reasonable rate for all partners (Godino, Tostrud, Wolke and O'Mara)
 21 seeking fees as set forth in Plaintiffs' Revised Application (ECF No. 310) would be \$350/hr.

22 **B. Associate Rates**

23 There has been no evidence whatsoever produced by Plaintiffs' counsel in their
 24 Declarations to justify the rates for any associate attorney work claimed in this matter. As set
 25

26 ¹ Although not specifically stated by Mr. Godino in his Declaration, it is assumed for purposes of this
 27 Opposition to Plaintiffs' Revised Application (ECF No. 310) that the firm fee rates referred to are \$750/hr
 28 for Partners, up to \$525/hr for Associates and up to \$295/hr for Paralegals.

1 forth above, the associates who are listed as billing on this case for whom fees are being sought
 2 pursuant to Magistrate Judge Leen's Order (ECF No. 307) are Anthony Carter (TLG), Elizabeth
 3 Gonsiorowski (GPM), Chris Fallon (GPM) and Rayo Antonio (GPM). There is no specific
 4 evidentiary information provided in the Declarations of Mssrs. Godino and Tostrud or exhibits
 5 attached to those Declarations to describe the wage and hour litigation experience or expertise of
 6 any of the associates listed so as to justify the rates requested or otherwise inform the Court.

7 **Chris Fallon** - For Mr. Fallon, there is no explanation of his experience or expertise in the
 8 Declaration of Mr. Godino. The only information provided is in the firm bio for GPM which
 9 indicates that Mr. Fallon "focuses on securities, consumer, and anti-trust litigation" (not wage and
 10 hour), that he was previously a contract attorney working on anti-trust and business litigation
 11 disputes and that he earned his J.D in 2004. **Exhibit 4 to Godino Decl.** (ECF No. 310-1, page 90
 12 of 97). No other information is provided to inform this Court as to why the associate rate
 13 requested for Mr. Fallon of \$525/hr would be reasonable in the District of Nevada.

14 **Anthony Carter** - There is no information provided regarding Mr. Carter's experience
 15 litigating wage and hour matters in the Declaration of Mr. Tostrud. The total extent of
 16 information provided about Mr. Carter is in the firm resume for the TLG, which informs the Court
 17 that Mr. Carter is admitted to practice in the Commonwealth of Virginia and that he graduated
 18 from law school in 1995. **Exhibit C to Tostrud Decl.** (ECF No. 310-2, page 59 of 65). This
 19 information does not inform the Court at all as to why the rate of \$500/hr claimed for Mr. Carter
 20 could possibly be reasonable in the District of Nevada.

21 **Elizabeth Gonsiorowski** - For Ms. Gonsiorowski, there is also no information provided in
 22 Mr. Godino's Declaration regarding her experience or expertise in wage and hour litigation.
 23 Moreover, there isn't even a mention of her in the firm bio for GPM to indicate that she was an
 24 attorney licensed to practice law, let alone to attempt to support the requested \$395/hr charged for
 25 her services. **Exhibit 4 to Godino Decl.**, ECF No. 310-1.

26 **Rayo Antonio** - Antonio receives the same recognition and explanation as Gonsiorkowski
 27 in the Godino Declaration and the GPM firm bio (meaning none).

28 Under the circumstances, Plaintiffs' counsel has utterly failed to provide evidence to this

1 Court to justify the rates for any of the associate work claimed in Plaintiffs' Revised Application
 2 (ECF No. 310).² Therefore, in the complete absence of any useful information provided by
 3 counsel from which to determine an appropriate associate rate, this Court must turn to alternative
 4 sources of information. As noted above, in the absence of any evidence from counsel that the
 5 rates they are seeking are reasonable in the District of Nevada, the Court may consider "the fees
 6 awarded by other judges in the same locality in similar cases." *Tallman*, 23 F. Supp. 3d at 1257.
 7 In *Tallman*, Judge Pro awarded a rate of \$240/hr for an associate (Attorney Sniegocki) who had
 8 been out of law school for 6 years and who had 4 years of experience in wage and hour litigation.
 9 *Tallman*, 23 F. Supp. 3d at 1257, 1259.

10 From the extremely limited information provided by Plaintiffs' counsel, the rate of \$240/hr
 11 might possibly be applicable to Fallon and Carter based on their years of experience. For
 12 Gonsiorowski and Antonio, if the Court is satisfied that they were licensed attorneys who
 13 legitimately worked on this matter, a lower rate is arguably appropriate. By way of comparison,
 14 although not directly comparable due to the special negotiated rate provided by Lewis Brisbois for
 15 Clark County entities, associates billing on this matter for the defense are being billed at the rate of
 16 \$130/hr. **Declaration of Robert W. Freeman, at ¶ 5.** As such, Defendants request that the Court
 17 determine a reasonable rate for associate work on this matter in the range of \$150/hr to \$240/hr.

18 C. Paralegal Rates

19 As set forth above, Plaintiffs' counsel seeks paralegal rates in this matter ranging from a
 20 high of \$295/hr (Tia Reiss) to a low of \$180/hr (Cameron Sawyer).³ As with the associate rates
 21 requested, Plaintiffs' counsel has failed to provide any evidence or information to justify the
 22 paralegal rates requested or to otherwise establish that such rates have been approved or would be
 23 considered reasonable for this type of case in the District of Nevada. There is also no information
 24

25 ² For Gonsiorowski and Antonio, the complete lack of evidence provided to establish the bona fides of
 26 these individuals or that they even worked at the GPM firm would arguably allow this Court to reject
 awarding any of the fees attributed to these names.

27 ³ Mr. O'Mara listed some work in his Declaration for an individual named Val Weiss at \$100/hr, but the
 28 Declaration fails to identify whether Weiss is a paralegal. **O'Mara Decl., at ¶ 9** (ECF No. 310-3).

provided in any of the Declarations describing the years of experience or expertise of any of the paralegals for whom fees are requested.

In light of the lack of evidence provided by Plaintiffs' counsel to establish reasonable paralegal rates in this District, the *Tallman* case is again instructive. In *Tallman*, Judge Pro noted that in requesting a paralegal rate of \$150/hr, plaintiffs in that matter had not presented sufficient evidence supporting that rate based solely on a representation that this rate was "reasonable and appropriate." *Tallman*, 23 F. Supp. 3d at 1259. Judge Pro held in *Tallman* that in the absence of competent evidence from plaintiffs' counsel concerning the prevailing rate in this District, as well as the vague description of the paralegal's experience, a rate of \$90/hr would be appropriate. *Id.* As the same circumstances exist in this matter, Defendants would request that this Court adopt the prevailing rate pronounced by Judge Pro in *Tallman* for the applicable paralegal rate in this case.

In summary, Defendants agree that Plaintiffs' counsel has produced some competent evidence in the O'Mara Declaration that an appropriate rate for Plaintiffs' counsel who are law firm partners in wage and hour class actions in this District would be \$350/hr. As for appropriate rates for associate attorneys and paralegals, Plaintiffs' counsel has failed to set forth competent evidence of prevailing rates for such persons in this District, have failed to provide anything but the most meager information regarding the experience and qualifications of Attorneys Carter and Fallon, and have completely failed to provide any evidence of the experience and qualifications of any other person (associate or paralegal) for whom fees are sought. Under these circumstances, Defendants request that the Court follow the admonitions and findings in the *Tallman* decision by Judge Pro and establish rates of between \$150/hr to \$240/hr for associate attorneys and \$90/hr for paralegals in this case. Using reasonable rates, the fees requested by Plaintiffs' counsel would be reduced as follows:

	<u>Fees requested</u>	<u>Fees at proposed reasonable NV rate</u>
Godino	491.05 hrs @ \$750/hr = \$368,287.50	491.05 hrs @ \$350/hr = \$171,850.00
Wolke	524.65 hrs @ \$750/hr = \$393,487.50	524.65 hrs @ \$350/hr = \$183,627.50
Gonsiorowski	22.05 hrs @ \$395/hr = \$8,709.75	22.05 hrs @ \$200/hr = \$4,410.00
Fallon	5 hrs @ \$525/hr = \$2,625.00	5 hrs at \$240/hr = \$1,200.00
Antonio	152.45 hrs @ \$350/hr = \$53,357.50	152.45 hrs @ \$200/hr = \$30,490.00
Reiss	59.85 hrs @ \$295/hr = \$17,655.75	59.85 hrs @ \$90/hr = \$5,386.50
Kharadjian	2.5 hrs @ \$290/hr = \$725.00	2.5 hrs @ \$90/hr = \$225.00

1	<u>Ligman</u>	6.0 hrs @ \$310/hr = \$1,860.00	6.0 hrs @ \$90/hr = \$540.00
	<u>Skouras</u>	9.3 hrs @ \$200/hr = \$1,860.00	9.3 hrs @ \$90/hr = \$837.00
2	<u>Sawyer</u>	4.5 hrs @ \$180/hr = \$810.00	4.5 hrs @ \$90/hr = \$405.00
3		Total Lodestar	Total Lodestar
		<u>\$849,378.00</u>	<u>\$398,971.00</u>
4	<u>Tostrud</u>	893.9 hrs @ \$625/hr = \$558,687.50	893.9 hrs @ \$350/hr = \$312,865.00
	<u>Carter</u>	539.9 hrs @ \$500/hr = \$269,950.00	539.9 hrs @ \$240/hr = \$129,576.00
5		Total Lodestar	Total Lodestar
		<u>\$828,637.50</u>	<u>\$442,441.00</u>
6	<u>O'Mara</u>	135.45 hrs @ \$350/hr = \$47,407.50	135.45 hrs @ \$350/hr = \$47,407.50
	<u>Adrian</u>	.5 hrs at \$100/hr = \$50.00	.5 hrs @ \$90/hr = \$45.00
7	<u>Weiss</u>	1.7 hrs @ \$100/hr = \$170.00	1.7 hrs @ \$90/hr = \$153.00
		Total Lodestar	Total Lodestar
		<u>\$47,627.50</u>	<u>\$47,605.50</u>

8 As such, just reducing the rates to reasonable rates in the District of Nevada reduces
9 Plaintiffs' counsel's demand for attorneys' fees from \$1,725,643.00 to \$889,017.50. Of course, as
10 set forth below, significant additional reductions in attorneys' fees are warranted.

11 **Imbalance Of Work Performed By Partners, Associates And Paralegals**

12 In Exhibit 1 to his Declaration, Godino claims that a total of 1,277.35 hrs were billed by
13 members of his firm (2 partners, 3 associates, 4 paralegals and 1 research analyst) for work
14 identified in Magistrate Judge Leen's Order (ECF No. 307). Of those hours, 1015.70 (79.5%)
15 were billed by partners Godino and Wolke, 179.5 (14.1%) were billed by associates
16 Gonsiorowski, Fallon and Antonio, and only 82.15 (6.4%) were billed by paralegals Reiss,
17 Kharadjian, Skouras and Sawyer and the research analyst Ligman. **Exhibit 1 to Godino Decl.**,
18 (ECF No. 310-1, page 11 of 97).

19 In Exhibit A to his Declaration, Tostrud claims that he billed 893.9 hrs and his associate
20 Carter billed 539.9 hrs, for a total of 1,433.8 hrs for his firm. **Exhibit A to Tostrud Decl.**, (ECF
21 No. 310-2, at page 10 of 65). There is no paralegal time billed by Tostrud's firm. This breaks
22 down to a balance of 62.3% partner hrs to 37.7% associate hrs.

23 At paragraph 9 of his Declaration, O'Mara identifies 137.65 total hours billed for his firm,
24 broken down as follows: O'Mara – 135.45; Adrian (Staff) - .5; and Weiss (no designation) – 1.7.
25 **O'Mara Decl.**, (ECF No. 310-3, at pages 4-5 of 29). It is clear from the billing that O'Mara's role
26 was almost exclusively as "local counsel" for the two out-of-state firms of Glancy Prongay
27 Murray, LLP ("GPM") and Tostrud Legal Group ("TLG").

28 Adding the time together, the three firms representing Plaintiffs are seeking a total of

2,848.8 hrs of billable time based on the Order (ECF No. 307). Of those hours, the partners (Godino, Wolke, Tostrud and O'Mara) billed a total of 2,045.05 hrs (71.8%), associates (mainly Carter) only 719.4 hrs (25.25%) and only 84.35 hrs (2.9%) by paralegals or other persons. As will be set forth in much more detail below, much of that time (and effectively all of O'Mara's time) is duplicative work by those partners attending the same hearings, reviewing the same emails, orders and filings or work that would normally have been done by associates, paralegals or clerical staff had the work been done for a private client.

For example, at Lewis Brisbois, many of our clients expect a ratio of approximately 75% of work to be performed over the life of a case by associates and paralegals and 25% to be performed by the partners. **Freeman Decl., at ¶ 6.** As reflected by their billings, the hours worked by Plaintiffs' counsel Plaintiffs in this matter are essentially backwards, with the partners billing over 70% of the hours. This imbalance, especially the lack of use of paralegal time to review, sort and summarize numerous transcripts for the Special Master proceedings, demonstrates a serious imbalance in the time management of the billing requested by Plaintiffs' counsel that must be remedied by the Court in order to arrive at a reasonable amount of fees. Defendants propose that the Court take that imbalance into consideration when determining an appropriate fee award.

By way of calculation, if the partner percentage (at the reduced reasonable NV rate of \$350/hr) billed was closer to 25% of the total hours billed ($2,848.8/\text{hrs} \times .25 = 712.20$ hrs), the amount of fees demanded in the Revised Application for partners would go from \$715,767.05 to \$249,270.00 ($712.2/\text{hrs} \times \$350/\text{hr}$). Assuming a 70% to 5% associate to paralegal hours ratio at the reasonable NV rates, the amount of associate and paralegal fees (without adjustment for associates doing paralegal work) would go from a total of \$173,267.50 to \$458,656.80 for associate work and \$12,819.60 for paralegal work ($1848.8/\text{hr} \times .05 \times 90/\text{hr}$). Thus, at reasonable NV rates and a more reasonable partner to associate/paralegal ratio, the maximum potential attorneys' fees amount would be reduced even further to \$720,746.40.

II. The Hours Billed For The Motion To Compel Are Unreasonable.

Magistrate Judge Leen's Order finds, in pertinent part, as follows:

Monetary sanctions are also imposed against UMC in the form of reasonable costs and attorneys' fees unnecessarily incurred by plaintiffs, including costs incurred for plaintiffs' ESI consultants in connection with (1) filing the May 2013 motion to compel; (2) efforts to obtain compliance with the order compelling UMC to produce information responsive to the discovery requests in dispute; (3) attempts to identify and remedy UNC's deficient ESI production; and (4) costs of participating in special master proceedings.

Order (ECF No. 307, page 122 of 123). On May 15, 2013, Plaintiffs' counsel filed a Motion to Compel (ECF No. 92) addressing 4 interrogatories and approximately 33 requests for production that Plaintiffs believed were not properly responded to by Defendants, as well as a request for a privilege log and a site inspection. An Opposition (ECF No. 104) was filed by Defendants on June 10, 2013 and Plaintiffs filed their Reply (ECF No. 110) on June 20, 2013.

Two hearings were held to address the Motion to Compel. The first hearing, which took place on June 25, 2013, did not result in a ruling on the Motion to Compel (ECF No. 92) because of e-mail notification glitches between the Court and Lewis Brisbois attorneys. See Exhibit A to Freeman Decl., Transcript of June 25, 2013 Hearing. The first hearing began at 2:52 p.m. and concluded at 3:19 p.m., lasting a total of 27 minutes. *Id.* The second hearing took place on July 12, 2013. See Exhibit B to Freeman Decl., Transcript of July 12, 2013 Hearing. The second hearing began at 9:01 a.m. and concluded at 11:03 a.m. *Id.*

Defendants take issue with the amount of time expended by Plaintiffs' counsel in drafting and reviewing the Motion to Compel (ECF No. 92), preparing for the hearings, having three partners traveling and attending each hearing, as well as the excessive travel and lodging expenses incurred by the three partners to attend both hearings in person. Review of the billing entries attached as Exhibit 2 to Godino Declaration, Exhibit B to Tostrud Declaration and Exhibit 1 to O'Mara Declaration show that a total of approximately 220 hrs is being requested by Plaintiffs' counsel relating to meeting and conferring on discovery disputes, drafting and editing the Motion to Compel, preparing for the hearings and attending the hearings. As set forth in more detail below, this amount is excessive and was not necessary or reasonable to obtain the result.

A. Time Spent Drafting And Reviewing The Motion to Compel Was Excessive

As an initial matter, Magistrate Judge Leen's Order (ECF No. 307) does not specify that

1 Plaintiffs' counsel should be allowed to request fees related to the meet and confer process
 2 preceding the filing of the Motion to Compel (ECF No. 92). Plaintiffs' counsel's bills reflect a
 3 total of 16.5 hrs of billable time attributed to the meet and confer process, as follows:

4 **2.9 hrs** by Tostrud: 4/2/13 - (.9) meet and confer conference call with defense counsel;
 5 (1.7) conference all with co-counsel re: same; and 4/8/13 - (.3) edit draft letter to defense counsel
 re: discovery deficiencies. **Exhibit B to Tostrud Decl.** (ECF No. 310-2, page 12 of 65).

6 **2.5 hrs** by Gonsiorowski: 4/2/13 - (1.6) M&C prep and call; 4/4/13 - (.9) M&C letter.
Exhibit 2 to Godino Decl. (ECF No. 310-1, page 19 of 97).

7 **10.1 hrs** by Wolke: 4/2/13 - (2.0) Telephonic meeting and conference; begin to draft
 8 M&C letter; 4/4/13 - (6.0) draft revise meet and confer letter; 4/7/13 - (2.10) draft revise meet and
 confer letter. **Exhibit 2 to Godino Decl.** (ECF No. 310-1, page 20 of 97).

9 **1.0 hrs** by Godino: 4/9/13 - (1.0) review and edit M & C letter. **Exhibit 2 to Godino**
 10 **Decl.** (ECF No. 310-1, page 13 of 97).

11 As the meet and confer process is not identified by Magistrate Judge Leen's Order (ECF
 12 No. 307), Defendants request that all 16.5 hrs requested for this process be denied (-\$5,400 at
 13 reduced NV rates). If the Court determines that the meet and confer process was intended to be
 14 included, Defendants request that the hours be reduced as they are excessive. Tostrud (1.7),
 15 Wolke (2.0) and Gonsiorowski (1.6) each billed for the same conference call on 4/2/13, apparently
 16 to discuss strategy for the meet and confer letter. Since Tostrud was the partner who spoke to
 17 defense counsel, it would seem appropriate that he would be the one to discuss strategy with an
 18 associate to draft the letter. Normal staffing would utilize the associate to draft the letter and the
 19 partner to review and revise. Tostrud spent (.3) on 4/8/13 editing the letter, which seems
 20 appropriate. However, Wolke as a partner also participated in the strategy call and then spent
 21 more than 8 hours drafting the meet and confer letter and Godino spent 1 hr reviewing and editing
 22 it. This is duplicative, excessive and unreasonable. Wolke's time for both the strategy call and for
 23 drafting the letter should be denied.

24 Gonsiorowski, the associate, billed only (.9) on the letter, Wolke billed approx. (8.5) hours
 25 drafting the letter and Godino spent (1.0) hr editing the letter. Wolke's block time entry of (2.0)
 26 hrs for 4/2/13 reflects attending the telephonic meeting and conference also attended by Tostrud
 27 and Gonsiowski, followed by a semi-colon and a description for "begin to draft M&C letter."
 28 **Exhibit 2 to Godino Decl.** (ECF No. 310-1, page 20 of 97). Assuming that the call was either 1.6

1 or 1.7 hrs based on the entries by Tostrud and Gonsiorowski for the same call, Wolke would have
 2 spent .3 or .4 hrs beginning to draft the letter, for a total of almost 9 hrs to draft the letter. Not
 3 only does the amount of time spent drafting the meet and confer letter appear excessive, as noted
 4 above, normal reasonable staffing would have the associate draft the letter, not another partner. If
 5 the Court finds that the total time expended on drafting the meet and confer letter is reasonable,
 6 Defendants would request that the hours be billed at the reasonable associate rate, not the
 7 reasonable partner rate. Total reasonable hours would be 1.7 partner hrs for the call, 5 associate
 8 hours to draft letter, 1 partner hour to edit/revise for a total of \$1,945.00 for the meet and confer
 9 process instead of \$5,200.00 (at reasonable NV rates).

10 Plaintiffs' counsel has also included in their Application (2.25) hrs on 4/30/13 for Wolke
 11 for "Discovery Responses." **Exhibit 2 to Godino Decl.** (ECF No. 310-1, page 20 of 97). The
 12 entry is too vague to justify inclusion as fees authorized by Magistrate Judge Leen's Order. There
 13 is no explanation connecting this entry to the drafting of the Motion to Compel. As such, the 2.25
 14 hrs for Wolke on 4/30/13 should be denied (-\$787.50 at reasonable NV rates)). Wolke has
 15 additional entries that are vague and appear unrelated to the motion to compel, as follows:

16 5/15/13 – (5.8) revise finalize motion to compel; **revise letter to judge re cert motion**).
 17 Because the entry on 5/15/13 is block billed it is unclear how much time was spent revising and
 18 finalizing the motion to compel and how much was spent on the apparently unrelated "letter to
 19 judge re cert motion." Defendants would request that a minimum of 1.5 hrs be reduced from the
 20 entry on 5/15/13 for Wolke (-\$525.00).

21 6/14/13 – (5.5) review opposition, discuss w/ co-counsel, **discuss depositions, disco**
 22 **schedule, hearing, cert etc, emails same**. Again, the block entry does not indicate how much
 23 time was spent discussing depositions, the discovery schedule, cert or emails, all of which are not
 24 authorized by Magistrate Judge Leen's Order. It would appear that a reasonable amount of time to
 25 review Defendants' opposition to the motion to compel and discuss it with co-counsel would be in
 26 the neighborhood of 1 to 1.5 hours. As such, Defendants would request that the remaining 4 to 4.5
 27 hrs for this entry be denied (-\$1,400).

28 Additional entries that appear vague and unrelated to the motion to compel are as follows:

4/19/13 Gonsiorowski: (.6) **amend joint report**, mtc prelim research, review discovery.
 Amending a joint report is not authorized by the Order. Defendant requests that .2 hrs be denied
 for that entry (-\$40.00).

O'Mara - 6/11/13 (.2) review opposition to mtc; (.1) email counsel; (.1) **email regarding**
discovery extension. The email regarding discovery extension is not directly related to the
 motion to compel. As such, .1 hrs should be denied for that date (-\$35.00).

1 Reiss - 4/15/13 (.5) **Transcript** and 6/17/13 (.5) **Transcript**. This vague one-word
 2 description of billing is insufficient to provide any relation to work encompassed by the Order. As
 such, 1.0 hr of Reiss' time for the motion to compel should be denied (-\$90.00).

3 Tostrud - 5/16/13 - (.5) **review defense counsel request for extension**. To the extent the
 4 request for extension by defense counsel actually relates to the motion to compel (which is not
 clear from the vague entry), it does not take half an hour to review a request for an extension. This
 5 is likely an email that took (.1) to review and appears to be the same email O'Mara reviewed
 above. As such, this entry should be reduced to .1 hrs if allowed at all (-\$140.00).

6 A total of 209.05 hrs hours are requested for the Motion to Compel:

7 Tostrud - **20.7. hrs**: 4/8/13 - (.6) strategy session with co-counsel; 4/12/13 - (.8) discuss
 w/ co-counsel; 5/8/13 - (1.7) edit draft motion; 5/8/13 - (.9) discuss same with co-counsel AC;
 8 5/13/13 - (.7) edit motion; 5/16/13 - (.5) review defense counsel request for extension; 6/11/13 -
 (1.9) read and review opposition to motion; 6/11/13 - (1.4) discuss opposition w/ co-counsel;
 9 6/19/13 - (2.3) edit reply; 6/24/13 - (2.9) prep for hearing and travel to Las Vegas; 6/25/13 - (4.5)
 prepare for and travel to Las Vegas for hearing; 7/11/13 - (3.4) prepare for and travel to Las
 10 Vegas for hearing; 7/12/13 (6.9) participate in hearing; m & c with defense counsel and travel
 back to LA. **Exhibit B to Tostrud Decl.** (ECF No. 310-2, pages 12 and 13 of 65).

11 Carter - **51.0 hrs**: 5/9/13 - (2.2) review & edit motion to compel; 5/9/13 - (1.7) review &
 12 edit motion to compel and proposed order; 6/10/13 - (1.5) review defendant's opposition; 6/17/13
 - (2.5) prepare materials and create issues outline for hearing; 6/18/13 - (2.3) continue create
 13 issues outline for hearing; 6/18/13 - (2.1) review reply for accuracy and completeness; 6/19/13 -
 (4.5) continue create issues outline for hearing; 6/21/13 - (5.6) continue to edit issues outline;
 14 6/24/13 - (1.7) continue edit issues outline for hearing; 6/24/13 - (1.7) review Chavez case cited
 by Plaintiff in motion; 6/24/13 - (2.5) review and analyze cases cited in opposition; 7/3/13 - (3.5)
 15 prepare and review list of discovery disputes; 7/13/13 - (3.1) continue to prepare and review list of
 discovery disputes; 7/9/13 - (2.0) continue to prepare and review list of discovery disputes;
 16 7/10/13 - (3.5) continue to prepare and review list of discovery disputes; 8/9/13 - (4.5) update and
 edit list of discovery disputes; 8/12/13 - (6.1) update and edit list of discovery disputes. **Exhibit**
 17 **B to Tostrud Decl.** (ECF No. 310-2, pages 31 and 32 of 65).

18 Godino - **38.95 hrs**: 4/9/13 - (1.0) review and edit M&C letter; 5/2/13 - (1.80) review
 motion to compel and discuss with counsel; 5/3/13 - (1.5) review mtc and discuss with counsel;
 19 5/8/13 - (1.0) review edits to mtc; 5/12/13 - (.5) review revised mtc; 5/14/13 - (.5) update status
 on mtc and review PO; 5/15/13 - (2.5) review & edit Dec and exhibits for mtc, finalize and file;
 20 6/10/13 - (2.5) review opposition to mtc and outline reply brief; 6/17/13 - (1.0) work on reply to
 mtc; 6/20/13 - (1.75) - finalize reply and dec for mtc and file; 6/24/13 - (6.75) travel to Nevada,
 21 prep for hearing, meet with counsel; 6/25/13 - (6.15) attend mtc hearing and travel back to LA;
 7/11/13 - (5.75) - travel time to NV and prep for MTC hearing, meet with counsel; 7/12/13 -
 22 (6.25) attend hearing, travel back to LA. **Exhibit 2 to Godino Decl.** (ECF No. 310-1, pages 13
 and 14 of 97).

23 Gonsiorowski - **19.55 hrs**: 4/19/13 - (.6) amend joint report, mtc prelim research, review
 24 discovery; 4/22/13 - (.4) meet re mtc & case status; 4/29/13 - (3.9) working on mtc; 4/30/13 -
 (1.75) working on mtc; 5/1/13 - (5.2) working on mtc; 5/2/13 - (.4) working on mtc; 5/3/13 -
 25 (2.0) working on mtc; 5/8/13 - (.4) working on mtc; 5/10/13 - (3.6) revise mtc; 5/13/13 - (1.3)
 working on mtc. **Exhibit 2 to Godino Decl.** (ECF No. 310-1, page 19 of 97).

26 Wolke - **55.75 hrs**: 5/2/13 - (5.8) review revise motion to compel; 5/14/13 - (6.5) revise
 27 motion to compel, decl and proposed order; 5/15/13 - (5.8) revise finalize motion to compel -
 revise letter to judge re cert motion); 6/13/13 - (2.5) review opposition and begin drafting reply;
 28 6/14/13 - (5.5) review opposition, discuss w/ co-counsel, discuss depositions, disco schedule,

1 hearing, cert etc, emails same; 6/17/13 – (5.8) research draft reply; 6/18/13 – (5.1) draft reply;
 2 6/19/13 – (4.9) draft reply; 6/20/13 – (2.25) finalize reply; 6/24/13 – (1.5) meeting JT and GOD re
 hearing. **Exhibit 2 to Godino Decl.** (ECF No. 310-1, page 20 of 97).

3 O'Mara - **15.5 hrs**: 6/11/13 – (.2) review opposition to mtc; (.1) email counsel; (.1) **email**
 4 **regarding discovery extension**; 6/24/13 – (3.5) travel to LV for hearing; (.9) preparation for
 5 hearing; (1.0) attend hearing; (.8) discuss results/status with counsel after hearing; (.2) emails
 6 from/to Tostrud; (.2) call from Tostrud re mtc hearing; 6/24/13 – (.2) emails to counsel re mtc
 hearing; 6/26/13 – (.2) emails to counsel re July 12 hearing, review Court Minute Order; 7/11/13 –
 (.40) prepare email for hearing on July 12th; 7/12/13 – (1.0) preparation; (1.5) attend hearing; (2.0)
 conference with counsel; (3.5) travel to/from Reno/Las Vegas. **Exhibit 1 to O'Mara Decl.** (ECF
 No. 310-3, at pages 11 and 12 of 29).

7
 8 Kharadjian - **2.0 hrs**: 5/9/13 – (2.0) format motion to compel docs. **Exhibit 2 to Godino**
Decl. (ECF No. 310-1, page 19 of 97).

9 Reiss - **5.6 hrs**: 4/5/13 – (.5) **transcript**; 5/15/13 – motion to compel; 6/17/13 – (.5)
 10 **transcript**; 6/20/13 – (2.25) reply to motion to compel; 6/24/13 – (.85) motion to compel binder.
Exhibit 2 to Godino Decl. (ECF No. 310-1, page 20 of 97).

11 The number of total hours claimed just for strategy and then drafting the Motion to Compel
 12 is excessive. In all, Defendants have calculated that between Wolke, Carter, Gonsiorowski,
 13 Tostrud and Godino, over 50 hrs were spent between them just drafting, discussing and revising
 14 that motion. That amount of time is excessive for a motion that did not involve complicated legal
 15 issues or voluminous exhibits and only needed to identify what discovery had not been produced
 16 and why Plaintiffs believed it should be produced. Both Gonsiorowski and Wolke each billed
 17 over 18 hrs drafting the motion. As noted above, an associate would normally bill approximately
 18 75% of the drafting time with the partner billing approximately 25% (especially when the partner
 19 is billing at \$750/hr). Defendants hereby request that the amount of hours that would be
 20 reasonable to draft the motion to compel would be 25 hrs total, and that 75% of that time be billed
 21 at the reasonable NV associate rate defined by this Court and 25% be billed at the reasonable NV
 22 partner rate (\$5,937.50 total instead of \$14,586 or -\$8,649.00).

23 The amount of time spent and the unnecessary duplication of effort to review Defendants'
 24 Opposition to the Motion to Compel (ECF No. 104) is also excessive. The time records reflect
 25 that between June 10th and June 13th of 2013, Godino, Tostrud, Carter, Wolke and O'Mara
 26 collectively spent 15.5 hrs just to review and talk to each other about Defendants' Opposition, a
 27 document that is not even 10 pages long. **Exhibit 2 to Godino Decl.** (ECF No. 310-1, pages 19
 28 and 20 of 97); **Exhibit B to Tostrud Decl.** (ECF No. 310-2, pages 12 and 31 of 65); **Exhibit 1 to**

1 **O'Mara Decl.** (ECF No. 310-3, at page 11 of 29). Ms. Wolke alone billed 8 hrs to review and
 2 discuss the opposition with her colleagues on June 13th and 14th of 2013. Mr. Tostrud spent 3.3
 3 hours reviewing it and discussing it with co-counsel. Mr. Godino spent 2.5 hours reviewing it and
 4 Mr. Carter spent 1.5 hrs reviewing it. Mr. O'Mara on the other hand billed .20 to review it.

5 No private client would pay for 5 different attorneys (4 of them partners) to review the
 6 same document. Under the circumstances, it is Defendants' position that, at best, one partner and
 7 one associate should have been tasked to review the Opposition and discuss strategy for drafting
 8 the Reply, and that this could have been reasonably accomplished in no more than 2.5 hrs.
 9 (\$765.00 instead of \$5,500.00 or -\$4,735.00)

10 The amount of time spent drafting the Reply (ECF No. 110) in support of the Motion to
 11 Compel was also excessive. The time records referenced above reflect that 25.2 hrs were spent
 12 researching and drafting the Reply. Again, it is Defendants' position that Plaintiffs had too many
 13 attorneys working on the same document and that they had partners doing the majority of the
 14 drafting when an associate would have normally been tasked with that assignment. No private
 15 client would agree to have a partner (Wolke) billing \$750/hr spend over 18 hrs researching and
 16 drafting the Reply, with the associate Carter billing only 2.1 hrs on June 18, 2013 to review the
 17 reply "for accuracy and completeness." **Exhibit 2 to Godino Decl.** (ECF No. 310-1, page 20 of
 18 97); **Exhibit B to Tostrud Decl.** (ECF No. 310-2, page 31 of 65). The remainder of the hours
 19 were billed by partners Tostrud (2.3 hrs) and Godino (2.75) to add their own edits to the
 20 document. **Exhibit B to Tostrud Decl.** (ECF No. 310-2, page 12 of 65); **Exhibit 2 to Godino**
 21 **Decl.** (ECF No. 310-1, page 14 of 97). As a result, partners billed a little over 23 of the 25 hrs
 22 spent drafting the Reply. Defendants request that a reasonable amount of time to draft the Reply
 23 would have been between 10-15 hrs, with 75% of those hours billed at a reasonable associate rate
 24 and 25% billed at a reasonable partner rate. ($15 \times .75 = 11.75 \times \$240/\text{hr} = \$2,700.00 + 15 \times .25 =$
 25 $3.25 \times \$350/\text{hr} = \$1,312.50 = \text{total of } \$4,012.50 \text{ instead of } \$8,571.50, \text{ or } \underline{-\$4,559.00}.$)

26 The next unreasonable and unnecessary overbilling pertains to the preparation for and
 27 attendance at the hearings on the motion to compel. As noted above the first hearing took place on
 28 June 25, 2013. The billing records show that starting on June 17, 2013 and continuing through

1 June 24, 2013, Attorney Carter billed 20.8 hrs drafting and editing an “issue outline” and
 2 reviewing the cases cited in the motion to compel and opposition in order to prepare for the
 3 hearing on the motion to compel. **Exhibit B to Tostrud Decl.** (ECF No. 310-2, page 31 of 65). If
 4 Carter had actually drafted the motion and reply, he would not have needed to take nearly 21 hrs
 5 to create an issue outline and re-read and analyze cases that were in Plaintiffs’ motion and
 6 Defendants’ opposition and had already been recently reviewed and analyzed by other attorneys
 7 for Plaintiffs on the case who drafted the reply.

8 Again, no private client would pay for multiple attorneys to go over the same subject
 9 matter repeatedly like having Carter spend 4.2 hours re-reading and analyzing cases that were
 10 already analyzed and briefed by at least one other attorney in order to draft the reply. It is
 11 Defendants’ position that the facts show that an “issue outline” could easily have been drafted in
 12 no more than 3 to 5 hours had Plaintiffs’ counsel properly utilized their resources and request that
 13 the Court reduce the hours billed by Carter for the work described above to between 3-5 hrs hours
 14 at a reasonable associate rate ($5 \times \$240/\text{hr} = \$1,200$ instead of $20.8 \times \$240/\text{hr} = \$4,992.00$ or $\underline{\$3,792.00}$).
 15

16 With regard to attendance at the hearings, it was not necessary for Plaintiffs to send three
 17 partners to both hearings and therefore the time, travel and expenses requested for all three are
 18 excessive. Although Tostrud and Godino were admitted to practice *pro hac vice* in the District of
 19 Nevada for this matter, Defendants are unaware of any requirement that Mr. O’Mara needed to be
 20 present at the hearings. Although United States District Court Local Rule IA 11-2, “Admission To
 21 Practice In A Particular Case,” provides that Mr. O’Mara was required to be associated by Tostrud
 22 and Godino following their admission *pro hac vice* in this case, the Local Rule also specifically
 23 states that “[u]nless the court orders otherwise, the resident attorney need not personally attend all
 24 proceedings in court.” **Local Rule IA 11-2(d)**. Notwithstanding the provisions of the Local Rule,
 25 Mr. O’Mara traveled to Las Vegas from Reno for both hearings.

26 O’Mara’s requested billing for his travel and attendance at the two hearings on the motion
 27 to compel is as follows: 6/24/13 – (3.5) travel to LV for hearing; (.9) preparation for hearing;
 28 (1.0) attend hearing; (.8) discuss results/status with counsel after hearing; 7/12/13 – (1.0)

1 preparation; (1.5) attend hearing; (2.0) conference with counsel; (3.5) travel to/from Reno/Las
 2 Vegas. **Exhibit 1 to O'Mara Decl.** (ECF No. 310-3, at pages 11 and 12 of 29). The total amount
 3 of hours billed for O'Mara to prepare for and attend the two hearings was 14.2 hrs. Importantly,
 4 the transcript of the first hearing on June 25, 2013 does not reflect that Mr. O'Mara made any
 5 contribution to the hearing on behalf of Plaintiffs. See Exhibit A to Freeman Decl. The
 6 transcript of the second hearing reflects that the only time O'Mara spoke was at the end of the
 7 hearing to request that he be excused from attending the next status conference due to familial
 8 responsibilities, at which time Magistrate Judge Leen excused him from even needing to be
 9 present telephonically. See Exhibit B to Freeman Decl., at p.28:5-20. Therefore, unless
 10 Plaintiffs can provide evidence of a Court order requiring O'Mara to be present as local counsel
 11 for the two hearings on the motion to compel, it is Defendants' position that all 14.2 hrs billed by
 12 O'Mara to prepare for, travel to and attend the hearings on the motion to compel should be denied
 13 (-\$4,970.00).

14 Based on the O'Mara Declaration and Exhibit 1, his firm is seeking \$1,769.66 for auto
 15 rental, airfare, taxi and parking to attend court appearances for the hearings on the motion to
 16 compel as well as subsequent status conferences and Special Master proceedings. **O'Mara Decl.,**
 17 **at ¶ 13.** Because O'Mara does not break down the requested costs by date of travel, Defendants
 18 cannot determine how much of the \$1,769.66 is attributable to his travel to Las Vegas for the
 19 hearings on the motion to compel in June and July of 2013. Nevertheless, because O'Mara was
 20 not required to be there (and was arguably not required to personally attend any other court
 21 proceeding), Defendants request that the Court deny all of the requested costs (-\$1,769.66).

22 The transcripts of the two hearings show that Tostrud was the only attorney that argued the
 23 merits of the motion to the Court. **Exhibits A & B to Freeman Decl.** Godino billed 24.9 hrs to
 24 prepare for and attend the two hearings, as follows: 6/24/13 – (6.75) travel to Nevada, prep for
 25 hearing, meet with counsel; 6/25/13 – (6.15) attend mtc hearing and travel back to LA; 7/11/13 –
 26 (5.75) – travel time to NV and prep for MTC hearing, meet with counsel; 7/12/13 – (6.25) attend
 27 hearing, travel back to LA. **Exhibit 2 to Godino Decl.** (ECF No. 310-1, page 14 of 97). Based on
 28 the fact that his presence did not add anything substantive to the proceedings, Godino's

1 preparation for, travel to and attendance at the two hearings was unnecessary and the Court should
 2 deny all 24.9 hrs billed (-\$8,715.00). Godino's Declaration does not break down the costs for
 3 airfare, taxi, hotel attributed to his trips to Las Vegas for the two hearing on the motion to compel.
 4 Nevertheless, Godino should be instructed by the Court to provide that information so those costs
 5 can be deducted from any award by the Court.

6 Since Tostrud was the only attorney for Plaintiffs who actually participated in the hearings
 7 in a meaningful way, only his reasonable hours should be considered by the Court for purposes of
 8 the Application. Tostrud requests the following applicable billings: 6/24/13 – (2.9) prep for
 9 hearing and travel to Las Vegas; 6/25/13 – (4.5) prepare for and travel to Las Vegas for hearing;
 10 7/11/13 – (3.4) prepare for and travel to Las Vegas for hearing; 7/12/13 (6.9) participate in
 11 hearing; m & c with defense counsel and travel back to LA. **Exhibit B to Tostrud Decl.** (ECF
 12 No. 310-2, pages 12 and 13 of 65). While Tostrud has billing entries stating prep for hearing and
 13 travel to Las Vegas for both June 24th and 25th, the entry on the 25th appears to more reasonably
 14 reflect the time spent for his actual attendance at the truncated hearing on that date and his return
 15 travel to LA. Under the circumstances, the amount of time for travel and preparation time would
 16 not appear to be unreasonable (if billed at a reasonable partner rate for this District).

17 Tostrud's Declaration also does not identify a break down of the exact costs for airfare,
 18 taxi/parking/rental car or hotel attributable to the two hearings on the motion to compel, as they
 19 are lumped in with other similar costs for the Special Master proceedings. **Tostrud Decl., at ¶ 13.**
 20 Without a proper break down, it is impossible for Defendants to ascertain if the costs for lodging,
 21 rental car, etc. were reasonable. Tostrud should be required to provide more accurate information
 22 breaking down the travel and lodging costs for the two hearings so that the Court can make a
 23 determination of what costs should be reasonably allowed. Defendants will then rely on the
 24 Court's best judgment to determine if the costs requested by Tostrud for the hearings are
 25 reasonable.

26 **III. The Hours Billed For The Special Master Proceedings Are Unreasonable**

27 **A. Unnecessary Duplicative Attendance At Special Master Hearings**

28 The following shows the duplicative billings for preparation, travel and attendance at the

1 various Special Master Hearings, by date of hearing:

2 **4/4/14 SM Hearing**

3 Godino – 4/3/14 and 4/4/14. Billed 19 hrs to prepare for, travel to, attend and return from
4 SM hearing. **Exhibit 2 to Godino Decl.**, (ECF No. 310-1, at page 14 of 97).

5 Tostrud – /1/14 through 4/5/14. Billed 26.8 hrs to prepare for, travel to, attend and return
6 from SM hearing. **Exhibit B to Tostrud Decl.**, (ECF No. 310-2, at pages 19-20 of 65).

7 O'Mara – 4/4/14. Billed 13 hrs to travel to, attend, discuss w/ co-counsel and return from
8 SM hearing. **Exhibit 1 to O'Mara Decl.**, (ECF 310-3, at page 13 of 29). **Total 58.8 hrs**

9 **4/7/14 SM Hearing**

10 Godino - 4/6/14 and 4/7/14. Billed 20 hrs to prepare for, travel to, attend and return from
11 SM hearing. **Exhibit 2 to Godino Decl.**, (ECF No. 310-1, at page 14 of 97).

12 Tostrud - 4/6/14 through 4/8/14. Billed 25 hrs to prepare for, travel to, attend, discuss with
13 co-counsel and return from SM hearing. **Exhibit B to Tostrud Decl.**, (ECF No. 310-2, at page 20
14 of 65).

15 O'Mara – 4/7/14. Billed 13 hrs to travel to, attend, discuss w/ co-counsel and return from
16 SM hearing. **Exhibit 1 to O'Mara Decl.**, (ECF 310-3, at page 14 of 29). **Total 58.0 hrs**

17 **4/10/14 Telephonic SM Hearing**

18 Godino – 4/10/14. Billed 4.5 hrs to prepare for and attend telephonic SM hearing. **Exhibit**
19 **2 to Godino Decl.**, (ECF No. 310-1, at page 15 of 97).

20 Tostrud – 4/9/14 & 4/10/14. Billed 11.6 hrs to prepare for, strategize with co-counsel and
21 attend a telephonic SM hearing that lasted 1.9 hrs; **Exhibit B to Tostrud Decl.**, (ECF No. 310-2,
22 at page 20 of 65).

23 O'Mara – 4/9/14 & 4/10/14. Billed 3.1 hrs to prepare for and attend telephonic SM
24 hearing. **Exhibit 1 to O'Mara Decl.**, (ECF 310-3, at page 14 of 29). **Total 19.2 hrs**

25 **4/15/14 SM Hearing**

26 Godino – 4/15/14. Billed 7.0 hrs (lumped time) to prepare for and attend telephonic SM
27 hearing. **Exhibit 2 to Godino Decl.**, (ECF No. 310-1, at page 15 of 97).

28 Tostrud – 4/14/14 & 4/15/14. Billed 12.4 hrs to prepare for and attend a telephonic SM

1 hearing; **Exhibit B to Tostrud Decl.**, (ECF No. 310-2, at page 20 of 65). **Total 19.4 hrs**

2 **4/22/14 SM Hearing**

3 Wolke – 4/17/14 through 4/23/14. Billed approx. 24.75 hrs to prepare for, travel to, attend
4 SM hearing on 4/22/14 and return to LA on 4/23/14. **Exhibit 2 to Godino Decl.**, (ECF No. 310-1,
5 at page 21 of 97).

6 Godino – 4/18/14 through 4/23/14. Billed approx. 30 hrs (lumped time) to prepare for,
7 travel to, attend SM hearing on 4/22/14 and return to LA on 4/23/14; **Exhibit 2 to Godino Decl.**,
8 (ECF No. 310-1, at page 15 of 97).

9 Tostrud – 4/21/14 & 4/22/14. Billed 21.5 hrs to prepare for, travel to and attend SM
10 hearing on 4/22/14. **Exhibit B to Tostrud Decl.**, (ECF No. 310-2, at page 21 of 65). **Total 76.5**
11 **hrs.**

12 **5/1/14 SM Hearing**

13 Godino – 5/1/14. Billed approx. 4.25 hrs to prepare for and attend telephonic SM hearing.
14 **Exhibit 2 to Godino Decl.**, (ECF No. 310-1, at page 15 of 97).

15 Tostrud – 4/30/14. Billed 5.6 hrs to prepare for 5/1/14 telephonic hearing. **Exhibit B to**
16 **Tostrud Decl.**, (ECF No. 310-2, at page 21 of 65).

17 Carter – 4/28/14 through 5/1/14. Billed 2.6 hrs to prepare for and attend 5/1/14 telephonic
18 hearing. **Exhibit B to Tostrud Decl.**, (ECF No. 310-2, at page 39 of 65). **Total 12.45 hrs**

19 **5/6/14 SM Hearing**

20 Godino – 5/3/14 through 5/7/14. Billed approx. 25 hrs (lumped time) to prepare for, travel
21 to, attend SM hearing on 5/6/14 and return to LA on 5/7/14. **Exhibit 2 to Godino Decl.**, (ECF
22 No. 310-1, at page 15 of 97).

23 Tostrud – 5/5/14 & 5/6/14. Billed 18.6 hrs to prepare for, travel to and attend SM hearing
24 on 5/6/14. **Exhibit B to Tostrud Decl.**, (ECF No. 310-2, at page 21 of 65).

25 Carter – 5/5/14 through 5/6/14. Billed 2.7 hrs to prepare for SM hearing. **Exhibit B to**
26 **Tostrud Decl.**, (ECF No. 310-2, at page 39 of 65). **Total 46.3 hrs**

27 **5/29/14 and 5/30/14 SM Hearings**

28 Godino – 5/29/14 & 5/30/14. Billed 8.0 hrs to prepare for and participate in telephonic SM

1 hearings. **Exhibit 2 to Godino Decl.**, (ECF No. 310-1, at page 16 of 97).

2 Tostrud – 5/28/14, 5/29/14 & 5/30/14. Billed 27 hrs to prepare for and participate in
3 telephonic SM hearings. **Exhibit B to Tostrud Decl.**, (ECF No. 310-2, at page 23 of 65)

4 Carter - 5/29/14 & 5/30/14. Billed 4.6 hrs to prepare for and participate in telephonic SM
5 hearings. **Exhibit B to Tostrud Decl.**, (ECF No. 310-2, at page 41 of 65). **Total 39.6 hrs**

6 **6/4/14 SM Hearing**

7 Godino – 6/4/14. Billed 5 hrs to prepare for and attend telephonic SM hearing; **Exhibit 2**
8 **to Godino Decl.**, (ECF No. 310-1, at page 16 of 97).

9 Wolke – 6/4/14. Billed 3 hrs for telephonic SM hearing; **Exhibit 2 to Godino Decl.**, (ECF
10 No. 310-1, at page 21 of 97).

11 Tostrud – 6/3/14 & 6/4/14. Billed 11 hrs to prepare for and attend telephonic SM hearing.
12 **Exhibit B to Tostrud Decl.**, (ECF No. 310-2, at pages 23-24 of 65).

13 Carter – 6/3/14 & 6/14/14. Billed 8.3 hrs to prepare for and attend telephonic SM hearing.
14 **Exhibit B to Tostrud Decl.**, (ECF No. 310-2, at page 41 of 65).

15 O'Mara – 6/4/14. Billed 2.6 hrs to prepare for and attend telephonic SM hearing. **O'Mara**
16 **Decl.**, (ECF No. 310-3, at page 18 of 29). **Total 29.9 hrs**

17 **6/13/14 SM Hearing**

18 Godino – 6/12/14 & 6/13/14. Billed 6.25 hrs to prepare for and attend telephonic SM
19 hearing; **Exhibit 2 to Godino Decl.**, (ECF No. 310-1, at page 16 of 97).

20 Tostrud – 6/11/14 & 6/13/14. Billed 13.8 hrs to prepare for and attend telephonic SM
21 hearing; **Exhibit B to Tostrud Decl.**, (ECF No. 310-2, at page 24 of 65). **Total 20.05 hrs**

22 **6/16/14 SM Hearing**

23 Wolke - 6/16/14 and 6/17/14. Billed 15.5 hrs to travel to, attend and return from SM
24 hearing on 6/16/14; **Exhibit 2 to Godino Decl.**, (ECF No. 310-1, at page 21 of 97).

25 Godino – 6/14/14 through 6/17/14. Billed 25.5 hrs to prepare for, travel to, attend and
26 return from SM hearing on 6/16/14; **Exhibit 2 to Godino Decl.**, (ECF No. 310-1, at page 1 of 97).

27 Tostrud - 6/14/14 through 6/16/14. Billed 24.6 hrs to prepare for, travel to, attend and
28 return from SM hearing on 6/16/14; **Exhibit B to Tostrud Decl.**, (ECF No. 310-2, at pages 24-25

1 of 65). **Total 65.6 hrs.**

2 **6/26/14 SM Hearing**

3 Godino – 6/26/14. Billed 4.0 hrs to prepare for and participate in telephonic SM hearing;

4 **Exhibit 2 to Godino Decl.**, (ECF No. 310-1, at page 17 of 97).

5 Tostrud - 6/25/14 & 6/26/14. Billed 13 hrs to prepare for and participate in telephonic SM
6 hearing; **Exhibit B to Tostrud Decl.**, (ECF No. 310-2, at pages 25-26 of 65)

7 Carter – 6/26/14. Billed 1.2 hrs to participate in telephonic SM hearing. **Exhibit B to**

8 **Tostrud Decl.**, (ECF No. 310-2, at page 45 of 65). **Total 18.2 hrs.**

9 **7/3/14 SM Hearing**

10 Godino – 7/3/14. Billed 4.5 hrs to prepare for and participate in telephonic SM hearing;

11 **Exhibit 2 to Godino Decl.**, (ECF No. 310-1, at page 17 of 97).

12 Tostrud – 7/3/14. Billed 7.1 hrs to prepare for and participate in telephonic SM hearing;

13 **Exhibit B to Tostrud Decl.**, (ECF No. 310-2, at page 26 of 65)

14 Carter – 7/3/14. Billed 1.2 hrs to participate in telephonic SM hearing. **Exhibit B to**

15 **Tostrud Decl.**, (ECF No. 310-2, at page 47 of 65) **Total 12.8 hrs.**

16 **7/25/14 SM Hearing**

17 Godino – 7/25/14. Billed 4 hrs to prepare for and participate in telephonic SM hearing;

18 **Exhibit 2 to Godino Decl.**, (ECF No. 310-1, at page 17 of 97).

19 Tostrud – 7/25/14. Billed 3.9 hrs to prepare for and participate in telephonic SM hearing;

20 **Exhibit B to Tostrud Decl.**, (ECF No. 310-2, at page 27 of 65)

21 Carter – 7/25/14. Billed 1.1 hrs to prepare for and participate in telephonic SM hearing.

22 **Exhibit B to Tostrud Decl.**, (ECF No. 310-2, at page 49 of 65) **Total 9.0 hrs.**

23 **7/28/14 SM Hearing**

24 Godino – 7/28/14. Billed 4 hrs to prepare for and participate in telephonic SM hearing;

25 **Exhibit 2 to Godino Decl.**, (ECF No. 310-1, at page 18 of 97).

26 Tostrud – 7/28/14. Billed 2.8 hrs to prepare for and participate in telephonic SM hearing;

27 **Exhibit B to Tostrud Decl.**, (ECF No. 310-2, at page 27 of 65) **Total 6.8 hrs.**

28 **8/4/14 SM Hearing**

1 Wolke – 8/4/14. Billed 6.5 hrs (lumped time with other entries) for “conf call with SMG;”
2 **Exhibit 2 to Godino Decl.**, (ECF No. 310-1, at page 22 of 97).

3 Tostrud – 8/3/14 & 8/4/14. Billed 10.8 hrs to prepare for and participate in telephonic SM
4 hearing; **Exhibit B to Tostrud Decl.**, (ECF No. 310-2, at page 28 of 65)

5 Carter – 8/4/14. Billed 2.0 hrs to prepare for and participate in telephonic SM hearing.
6 **Exhibit B to Tostrud Decl.**, (ECF No. 310-2, at page 49 of 65) **Total 18.4 hrs**

7 **8/8/14 SM Hearing**

8 Godino – 8/8/14. Billed 3 hrs to participate in telephonic SM hearing; **Exhibit 2 to**
9 **Godino Decl.**, (ECF No. 310-1, at page 18 of 97).

10 Tostrud – 8/7/14 & 8/8/14. Billed 9.7 hrs to prepare for and participate in telephonic SM
11 hearing; **Exhibit B to Tostrud Decl.**, (ECF No. 310-2, at page 27 of 65).

12 Carter – 8/8/14. Billed 1.2 hrs to prepare for and participate in telephonic SM hearing.
13 **Exhibit B to Tostrud Decl.**, (ECF No. 310-2, at page 50 of 65).

14 O’Mara – 8/8/14. Billed 1.2 hrs to participate in telephonic SM hearing. **O’Mara Decl.**,
15 (ECF No. 310-3, at page 21 of 29). **Total 15.1 hrs.**

16 **8/15/14 SM Hearing**

17 Godino – 8/15/14. Billed .25 hrs to participate in telephonic SM hearing; **Exhibit 2 to**
18 **Godino Decl.**, (ECF No. 310-1, at page 18 of 97).

19 Tostrud – 8/15/14. Billed 2.7 hrs to prepare for and participate in telephonic SM hearing;
20 **Exhibit B to Tostrud Decl.**, (ECF No. 310-2, at page 28 of 65).

21 Carter – 8/15/14. Billed 1.0 hr to prepare for and participate in telephonic SM hearing.
22 **Exhibit B to Tostrud Decl.**, (ECF No. 310-2, at page 51 of 65) **Total 3.95 hrs**

23 **10/21/14 SM Hearing**

24 Godino – 10/7/14 to 10/21/14. Billed 33 hrs preparing for hearing, traveling to Las Vegas
25 for hearing and returning from hearing to LA. **Exhibit 2 to Godino Decl.** (ECF No. 310-1, page
26 19 of 97).

27 Wolke – 9/24/14 to 10/21/14. Billed 54 hrs preparing for hearing, traveling to Las Vegas
28 for hearing and returning from hearing to LA. **Exhibit 2 to Godino Decl.** (ECF No. 310-1, page

23 of 97).

Tostrud - 9/29/14 to 10/21/14. Billed 54.6 hrs preparing for hearing, traveling to Las Vegas for hearing and returning from hearing to LA (13.9 hrs billed on 10/8 and 10/19 were not counted towards this amount as they were included separately in the sanctions argument). **Exhibit B to Tostrud Decl.** (ECF No. 310-2, at pages 29-30 of 65).

Carter - 10/7/14, 10/10/14 & 10/14/14. Billed 4 hrs to meet with Tostrud, Godino and Wolke to strategize for the 10/21/14 SM hearing. **Exhibit B to Tostrud Decl.**, (ECF No. 310-2, at page 54 of 65)

O'Mara - 10/20/14 to 10/21/14. Billed 10 hrs traveling to Las Vegas from Reno, meeting with co-counsel, attend hearing and return to Reno. **O'Mara Decl.** (ECF No. 310-3, at page 25 of 29). **Total 155.6 hrs.**

As with the hearings on the motions to compel, it appears from the billings that Tostrud was the main partner preparing for the hearings and that Godino, Wolke, Carter and O'Mara were mostly just there to overbill when they attended. Defendant's position is that the attendance of two or three (or four) partners at any of these Special Master hearings was not necessary and that the entire amount billed by anyone other than Tostrud to attend the Special Master hearings should be denied Allowable: 302.5 Tostrud hrs x \$350/hr = \$105,875.00. Reductions: 29.9 associate hrs x \$240/hr = -\$7,176.00 + 353.9 partner hrs at \$350/hr = -\$123,865.00 for a total of -\$131,041.00 for the duplicative preparation and attendance at Special Master hearings.

The same would go for costs incurred to travel in person to Las Vegas for these Special Master hearings by anyone other than Tostrud. As with the costs allegedly incurred for the travel, lodging, etc. for the hearings on the motion to compel, Plaintiffs' counsel have not provided a specific break down by date to indicate how much was spent for the unnecessary duplication of travel, lodging, etc. for the Special Master hearings that required in-person attendance. As such, Plaintiffs' counsel should provide a break down so that this Court can properly evaluate the amounts to be denied and the reasonableness of the costs attributed to Tostrud.

B. Research and Draft Proposed Special Master Report/Order

Wolke - 6/6/14 through 7/11/14. Billed 188.75 hrs researching and drafting the Special

1 Master proposed order. **Exhibit 2 to Godino Decl.**, (ECF No. 310-1, at pages 21 and 22 of 97).

2 Godino – 6/25/14 through 7/11/14. Billed approx. 19.75 hrs reviewing, editing and
3 finalizing “SM PO” (assumed to be Special Master Proposed Order). This is approximate since
4 there are other entries lumped in. **Exhibit 2 to Godino Decl.**, (ECF No. 310-1, at page 17 of 97).

5 Antonio – 7/1/14 to 7/11/14. Antonio billed 32.5hrs for conducting legal research, drafting
6 portions of and reviewing documents and gathering exhibits for a “Proposed Order” (which based
7 on the timing and Godino’s references to “SM PO”, Defendants assume is the Special Master
8 Proposed Order). **Exhibit 2 to Godino Decl.**, (ECF No. 310-1, at page 13 of 97).

9 Tostrud – 7/11/14. Billed 2.2 hrs to review Special Master e-discovery summary and
10 order. **Exhibit B to Tosturd Decl.**, (ECF No. 310-2, at page 27 of 65).

11 Carter – 6/9/14 through 7/11/14. Billed a total of 38.5 hrs for researching similar Special
12 Master proposed reports for structure and legal authority, drafting data-mapping section for
13 inclusion in proposed report & recommendation, and drafting, preparing and filing the proposed
14 order. **Exhibit B to Tosturd Decl.**, (ECF No. 310-2, at pages 42-48 of 65).

15 Although the Special Master proposed order containing findings of fact and conclusions of
16 law was lengthy and involved, with all of the time spent reviewing and summarizing transcripts
17 and the regular orders keeping track of the progress, it is Defendant’s position that 281.7 hrs to
18 draft that proposed order is unreasonable. This is especially true since approximately 70% of that
19 time was billed by Wolke, a partner, at \$750/hr. Again, no paying client would authorize a senior
20 partner billing at that rate to do the vast majority of the work involved. Defendants propose that a
21 more reasonable amount of time to draft the Special Master proposed order would have been in the
22 range of 50-70 hrs, with 75% of the time billed at reasonable associate rate and 25% at a
23 reasonable partner rate. $(70 \times .75 = 52.5 \times \$240/\text{hr} = \$12,600 + 70 \times .25 = 17.5 \times \$350/\text{hr} = \$6,125$
24 $= \text{a reasonable total of } \$18,725.00 \text{ instead of } (210.7 \text{ partner hrs} \times \$350/\text{hr} = \$73,745.00 + 38.5 \times$
25 $\$240/\text{hr associate hrs} = \$9,240 + 32.5 \times \$200/\text{hr associate hrs} = \$6,500) = \$89,485.00, \text{ or } \underline{\$70,760.00}.$

27 **C. Reviewing Defendants’ Opposition to Special Master Proposed Order,**
28 **Drafting Response and Reviewing Defendant’s Reply**

1 Wolke – 9/2/14 through 9/27/14. Billed 67.7 hrs reviewing Defendants’ Objections to
 2 Special Master Order and researching and drafting a response to the Objections and reviewing
 3 Defendants’ reply. **Exhibit 2 to Godino Decl.**, (ECF No. 310-1, at page 23 of 97).

4 Godino – 9/2/14 through 9/27/14. Billed 51.1 hrs reviewing Defendants’ Objections to
 5 Special Master Order, researching and drafting a response to the Objections and reviewing
 6 Defendants’ reply. **Exhibit 2 to Godino Decl.**, (ECF No. 310-1, at pages 18 and 19 of 97).

7 Tostrud – 9/3/14 through 9/17/14. Billed 20.2 hrs reviewing Defendants’ Objections to
 8 Special Master Order, discussing it with co-counsel, editing and drafting a response to the
 9 Objections and reviewing the motion or leave to file a reply. **Exhibit B to Tostrud Decl.** (ECF
 10 No. 310-2, at page 29 of 65).

11 Carter – 9/3/14 through 9/29/14. Billed 27.5 hrs reviewing Defendants’ Objections to
 12 Special Master Order, preparing a rebuttal chart and other materials for response, meeting with co-
 13 counsel and analyzing Defendants’ reply. **Exhibit B to Tostrud Decl.** (ECF No. 310-2, at pages
 14 51-53 of 65).

15 Fallon – 10/5/14. Billed 5 hrs “reviewing” the Special Master Report, UMC’s objections,
 16 Plaintiffs’ response and UMC’s reply. **Exhibit 2 to Godino Decl.**, (ECF No. 310-1, at page 13 of
 17 97). This appears to be Fallon’s only entry. Apparently, he wanted to “get in on” some of the
 18 churning for this case. All of his time should be denied as it does not appear that there was any
 19 purpose for this billing.

20 Once again, three partners and two associates somehow bill 171.5 hrs of combined time
 21 just to review Defendants’ Objections to the Special Master proposed order and respond to those
 22 objections. Once again, approximately 80% of the time billed is billed by partners. No private
 23 client would countenance this kind of unbalanced and duplicative effort. Defendants propose that
 24 a more reasonable amount of time to review and respond to Defendants’ Opposition to the Special
 25 Master proposed order and review Defendants’ reply would have been in the range of 30-40 hrs.
 26 with 75% of the time billed at reasonable associate rate and 25% at a reasonable partner rate. (40
 27 hrs x .75 = 30 x 240/hr = \$7,200.00 + 40 hrs x .25 = 10 x \$350/hr = \$3,500.00 for total of
 28 \$10,700.00; instead of 139 x \$350/hr = \$48,650.00 + 32.5 x \$240/hr = \$7,800.00 for a total of

1 \$56,450.00). Total deduction -\$45,750.00.

2 **D. Sanctions Research and Motion for Sanctions**

3 Over time, several attorneys spent 166.3 hrs researching the issue of discovery sanctions,
4 drafting a motion for sanctions, reviewing Defendants' opposition, drafting a reply and drafting
5 other supplemental submissions relative to sanctions. The hours spent on the motion for sanctions
6 are excessive.

7 Wolke – 4/14/14 through 7/11/14. Billed approximately 24.75 hrs on researching
8 sanctions (lumped entries with other tasks make it difficult to determine exact hrs). **Exhibit 2 to**
9 **Godino Decl.**, (ECF No. 310-1, at page 17 of 97).

10 Antonio – On 7/8/14, Antonio billed 1.75 hrs for conducting legal research regarding
11 sanctions. **Exhibit 2 to Godino Decl.**, (ECF No. 310-1, at page 13 of 97).

12 Carter – 1/24/14 through 3/28/14, billed 26.6 hrs researching and drafting the motion for
13 sanctions and declarations. **Exhibit B to Tostrud Decl.** (ECF No. 310-2, at pages 32-34 of 65).
14 At least .5 hrs should be written off as clerical work based on billing by Carter to file the motion
15 for sanctions and supporting docs (3/5/14 entry). Between 3/25/14 and 3/28/14, Carter billed 4.3
16 hrs to review Defendants' opposition and draft the reply to the motion for sanctions. **Id.** (ECF No.
17 310-2, at pages 34- of 65). From 6/11/14 to 10/15/14, Carter billed another 13 hrs researching
18 case law for sanctions issues. Total 44.4 hrs by Carter.

19 Tostrud – 1/22/14 to 10. Tostrud billed 95.4 hrs strategizing, researching and drafting the
20 motion for sanctions, reviewing the opposition and drafting the reply and supplemental submission
21 requesting sanctions. **Exhibit B to Tostrud Decl.** (ECF No. 310-2, at pages 14-30 of 65). Of that
22 total, 36.7 hrs were spent by Tostrud, as a partner, researching sanctions decisions. Research
23 projects of this breadth are generally done by associates and/or experienced paralegals, not
24 partners.

25 Altogether, again it is clear that the work load was not reasonably balanced as partners
26 (Wolke and Tostrud) billed approximately 120 of the 166 hrs devoted to obtaining sanctions in
27 this case. It is Defendants' position that the research was excessive, especially since the majority
28 of the research was conducted by Tostrud. A motion for sanctions should not take 166 hours to

1 strategize, research and prepare. The issues regarding the request for sanctions (spoliation based
 2 on alleged failure to preserve evidence) are not that difficult. Plaintiffs' counsel appear to have
 3 milked the sanctions motion for all they could. It is Defendants' position that a more reasonable
 4 amount of time to be spent researching and drafting the motion for sanctions would have been in
 5 the 30-40 hr range, again with a 75%/25% balance between reasonable associate and partner rates.
 6 (40 hrs x .75 = 30 x 240/hr = \$7,200.00 + 40 hrs x .25 = 10 x \$350/hr = \$3,500.00 for total of
 7 \$10,700.00; instead of 120.15 x \$350/hr = \$42,052.50 + 46.15 x \$240/hr = \$11,076.60 for a total
 8 of \$53,128.50). Total reasonable deduction -\$42,428.50.

9 **E. Improperly Billed Paralegal Or Clerical Work**

10 Antonio – Between 6/6/14 and 7/10/14, Antonio had numerous entries stating “reviewed
 11 hearing transcripts for discovery record” and “reviewed hearing transcripts for case issues.”
 12 **Exhibit 2 to Godino Decl.** (ECF No. 310-1, page 13 of 97). Antonio billed 75.65 hrs to review
 13 transcripts for “discovery record” and “case issues” and draft summaries of those transcripts.
 14 Although not identified as such by Plaintiffs, it appears fairly certain that the transcripts reviewed
 15 were of the Special Master hearings. Reviews of transcripts and summaries are duties normally
 16 done by paralegals, not by associates billing \$350/hr. Without any information from the billing
 17 entries on how many pages of transcripts were reviewed or how long the summaries were, it is
 18 difficult for Defendants to know if 75.65 hrs is a reasonable amount of time. Based on inflation of
 19 hours seen thus far, it is Defendant's position that 50 hrs may likely be more reasonable. As such,
 20 Defendant would request that this time attributed for Antonio should be billed as 50 hrs at a
 21 reasonable paralegal rate (50 hrs x \$90/hr = \$4,500 instead of 75.65 x \$200/hr = \$15,130.00).
 22 total reasonable deduction -\$10,630.00.

23 Antonio – Between 8/5/14 and 9/16/14, Antonio billed 23 hrs for reviewing supplemental
 24 brief, case brief, hearing transcripts and transcript materials and gathering documents and exhibits
 25 for the briefs. **Exhibit 2 to Godino Decl.** (ECF No. 310-1, page 13 of 97). Again, reviewing
 26 documents to gather exhibits for a brief is work that appears to be work that could have been done
 27 by a paralegal. If the Court agrees, Defendant would request that all 23 hrs billed by Antonio for
 28 this work be billed at a reasonable paralegal rate (23 x \$90/hr = \$2,070.00, instead of 23 x \$200/hr

1 = \$4,600). Total reasonable deduction -\$2,530.00.

2 Carter – Carter has numerous entries where he is billing to “prepare and assemble binder
3 documenting timeline of preservation efforts by defendant,” “assemble presentation materials for
4 upcoming hearing,” “prepare and assemble materials for Special Master Review and analysis,”
5 preparing “bullet point summary of parties’ duties,” reviewing and summarizing transcripts,
6 reviewing and assembling hearing transcripts, preparing spreadsheets documenting defendants’
7 representations, calculating hearing transcript pages and number of Special Master hearings (3.5
8 hrs!) and other work of a nature that would appear to be appropriate work for a paralegal. **Exhibit**
9 **B to Tostrud Decl.** (ECF No. 310-2, at pages 34-46 and 49-52 and 55 of 65). Carter billed 185.9
10 hrs preparing and assembling binders, reviewing and summarizing transcripts, and preparing
11 spreadsheets and bullet point summaries from transcript information and calculating the number of
12 Special Master hearings and pages of Special Master transcripts, all work that should have been
13 done by a paralegal. Defendants’ position is that all of this time should have been billed at a
14 reasonable paralegal rate ($185.9 \times \$90/\text{hr} = \$16,731.00$ instead of $185.9 \times \$240/\text{hr} = \$44,616.00$).
15 Total reasonable deduction -\$27,885.00.

16 It should be noted that of the few hours billed by paralegals Reiss and Skouras, the vast
17 majority of those hours billed (35.25 hrs) were for reviewing transcript hearings, comparing ESI
18 orders and preparing binders. See Exhibit 2 to Godino Decl., (ECF 310-1, at page 20 of 97).
19 This fact makes it clear that Reiss and Skouras were capable of performing and should have been
20 performing those tasks instead of Carter, who billed nearly 200 hrs for doing the same type of
21 work.

22 Tostrud – 3/21/14 through 3/28/14. Billed 14.5 hrs compiling documents and preparing
23 briefing books for the Special Master for hearings. **Exhibit B to Tostrud Decl.** (ECF No. 310-2,
24 at pages 18-19 of 65). This is also paralegal work that should not have been billed by a partner.
25 Defendant proposes that these hours be billed at a reasonable paralegal rate ($14.5 \times \$90/\text{hr} =$
26 $\$1,305.00$ instead of $14.5 \times \$350/\text{hr} = \$5,075.00$). Total reasonable deduction -\$3,770.00.

27 **IV. Other Improper Or Unnecessary Billing.**

28 As with other hearings and proceedings, there was unnecessary duplication of work when

multiple attorneys prepared for and/or attended the same status conference.

1/20/14 Status Conference

Godino – 1/20/14 & 1/21/14. Billed 13.25 hrs preparing for status conference, traveling to Las Vegas and returning from conference to LA. **Exhibit 2 to Godino Decl.** (ECF No. 310-1, page 14 of 97).

Tostrud - 1/20/14 to 1/21/14. Billed 8.7 hrs preparing for status conference, traveling to Las Vegas and returning from conference to LA. **Exhibit B to Tostrud Decl.** (ECF No. 310-2, at page 14 of 65).

As with previous in-person hearings, only Tostrud's billings and costs associated with this conference should be allowed ($13.25 \times \$350/\text{hr} = \underline{-\$4,637.50}$)

Tostrud - On 3/18/14, Tostrud billed 3.6 hrs to prepare for client meetings in LV on 3/19 and preparing a meeting agenda, documents and an outline for the client presentation on case status. These hours do not appear to be directly related to the issues addressed in the Order and therefore should be denied ($3.6 \times \$350/\text{hr} = \underline{-\$1,260.00}$).

Carter – 3/31/14 – (1.7) **research waiver of attorney client privilege.** This entry does not have any explanation that would relate it to Magistrate Judge Leen's Order and as such should be denied ($1.7 \times \$240/\text{hr} = \underline{-\$408.00}$).

V. Many Of The Requested Expert Costs Were Not Caused By The Alleged Discovery Shortcomings By Defendants And Must Be Denied.

Plaintiffs' counsel has also requested costs in the amount of \$324,548.33, including \$261,612.50 attributed to "ESI Hosting and Experts." **Godino Decl., at ¶ 13; Tostrud Decl., at ¶ 13.** Both Declarations state that the ESI experts actively participated in the Special Master proceedings and were required to attend all in-person hearings and several telephonic hearings. **Id., at ¶ 14.** A review of the entries in the bills from the ESI experts, International Litigation Services, Inc. ("ILS"), however, reveals that a large number of the items billed for were unrelated to the Special Master hearings and any other issues covered by Magistrate Judge Leen's Order (ECF No. 307). See Exhibit 3 to Godino Decl. (ECF No. 310-1, at pages 25-66 of 97).

For example, all hosting charges would have been incurred had there been no discovery

disputes between Plaintiffs and Defendants because the data being hosted by ILS was the data produced by Defendants. As such, all entries in Exhibit 3 to the Godino Declaration for the hosting of data are not covered by the Order (ECF No. 307). In addition, there are numerous entries pertaining to uploading and reviewing document productions from Defendants. These entries would also have been required in the normal course of discovery. The only entries that should be considered for the purposes of this Revised Application for costs and fees are the ones directly related to request from the Special Master and required attendance at Special Master hearings.

In reviewing Exhibit 3 to the Godino Declaration, Defendants have identified the following entries as those that would appear to be related to the relevant issues covered by the Order (ECF No. 307):

ILS Invoice # 2938 - \$36,210.83 (ECF No. 301-1, pages 25-30). Relevant entries on 2/6/14 (.5), 2/10/14 (.11), 2/11/14 (1.25), 2/11/14 (.55), 2/11/14 (1.24), 2/17/14 (.15), 2/20/14 (.21), 2/21/14, 2/21/14 (.28). Total relevant to Order, 4.45 hrs at \$350/hr = \$1,557.50.

ILS Invoice # 2997 - \$60,941.65 (ECF No. 301-1, pages 31-35). Pixley - Relevant time entries on 3/9/14, 3/10/14, 4/1/14, 4/2/14, 4/4/14, 4/6/14, 4/7/14, 4/18/14, 4/10/14, and 4/15/14 re preparation, travel and attendance at Special Master hearings in the total amount of 45.1 hrs x \$350/hr = \$15,785.00.⁴ Reasonable expenses for Mr. Pixley are requested in the amount of \$1,975.96 for airfare, meals and lodging, totaling \$17,760.96.

Forrest – Forrest has duplicative entries re preparation, travel and attendance at Special Master Hearings in the amount of 61.85 hrs x \$450/hr = \$27,832.50. Expenses for Forrest were requested for airfare, meals and lodging in the amount of \$3,748.52. As with the multiple partners attending the Special Master hearings, it is unclear why two experts, billing at \$350/hr and \$450/hr needed to attend the same Special Master hearings. Without further explanation as to why two

⁴ The invoice itself lists 55.1 hrs at \$350/hr for a total of \$19,285.00. Counsel for Defendants added the listed hrs for grouped under “Forensic support services – Bruce Pixley” on pages 31 and 32 of ECF No. 310-1 and it only added up to 45.1 hrs.

experts were needed to attend, it is Defendants' position that it would have been reasonable for just one expert to attend. In addition, it is Defendant's position that the forensic expert fee should not exceed the partner attorney rate of \$350/hr. Under the circumstances, Defendant would request that the reasonable portion allotted to this invoice be the \$17,760.96 billed by Pixley.

ILS Invoice # 2999 - \$16,576.99 (ECF No. 301-1, pages 36-39). Services provided by J Peer at \$350/hr. A review of all of the entries by J Peer in Invoice # 2999 does not appear to reveal any entries specific to the Special Master proceedings or that were otherwise required due to unnecessary discovery disputes. As such, it is Defendant's position that the entire Invoice # 2999 is not relevant or recoverable.

ILS Invoice # 3016 - \$46,833.90 (ECF No. 301-1, pages 40-43). Pixley - services billed in the amount of \$15,050.00. Review of the entries reveals that several are not related to the Special Master proceedings. The following entries are reasonable and proper: 4/21/14 (5.75 hrs), 4/22/14 (8 hrs); 4/23/14 (3.75 hrs); 5/6/14 (7 hrs).⁵ This would result in a reasonable total of 24.5 hrs x \$350/hr = \$8,575.00. The expenses for Pixley requested are in the amount of \$1,768.73. They appear to be reasonable. As such, the reasonable total for Pixley for total costs would be \$10,343.73.

Forrest - The time requested for Forrest in Invoice # 3016 results in a total amount of \$26,205. Again, the vast majority of that billing is for time traveling, preparing for, attending and returning from the same Special Master hearings that Pixley attended. This is duplicative. The relevant billings for Forrest for this invoice would be as follows: 4/16/14 (.17), 4/17/14 (.48), 4/20/14 (.42) and 5/4/14 (.20), for a total of 1.27 hr at \$350/hr = \$444.50. Forrest's expenses in the amount of \$3,810.17 are excessive, staying at the Wynn Encore with breakfast on 4/22/14 costing \$34.11, dinner with Mr. Pixley at Botero costing \$275.14, and lunch for \$28 at the Wynn. Deleting the duplicative billings for hearing preparation, travel and attendance by Forrest, as well as the unnecessary costs should not be included.

⁵ Pixley's entry indicates that his return flight to California was delayed and he billed 18 hrs. Normal billing for portal to portal travel from Las Vegas to Camarillo in other entries for Pixley is 3.5 hrs.

1 ILS Invoice # 3055 - \$7,511.75 (ECF No. 301-1, pages 44-47). Invoice # 3055 does not
 2 appear to have any entries that reference the Special Master proceedings. The entries appear to
 3 pertain to ESI hosting and other project management entries that relate to training attorneys to use
 4 the databases and downloading and searching documents received in discovery. As such, it is
 5 Defendants' position that the entire amount of Invoice #3055 should be denied.

6 ILS Invoice # 3051 - \$44,986.10 (ECF No. 301-1, pages 48-52). Pixley - 45.75 hrs billed
 7 as services provided in this invoice for a total of \$16,012.50. Of those 45.75 hrs, not all of them
 8 are relevant per the Order. The following appear to be relevant: 5/29/14 (4 hrs); 5/30/14 (2.5 hrs);
 9 6/4/14 (5 hrs); 6/12/14 (.5 hr); 6/13/14 (1.5 hrs); 6/15/14 (4.75 hrs); 6/15/14 (2.25 hrs); 6/16/14
 10 (10 hrs); 6/17/14 (4.75 hrs), for a total of 35.25 x \$350/hr = \$12,337.50. The expenses requested
 11 of \$839.17 appear reasonable for a total of \$13,176.67.

12 Forrest - Again, to the extent the hours and expenses pertain to preparation, travel and
 13 attendance to Special Master hearings or double participation in phone conferences with the
 14 Special Master, they are duplicative of Pixley's preparation, travel, attendance and expenses and
 15 should be denied. There are also numerous entries that do not appear to have anything to do with
 16 the Special Master proceedings. The following entries for Forrest would appear to be reasonable:
 17 6/9/14 (1.12 hrs); 6/12/14 (.30 hrs); 6/12/14 (.27 hrs), 6/13/14 (1.26 hrs), for a total of 2.95 hrs x
 18 \$350/hr = \$1,032.50. The remaining billing by Forrest of \$23,271.67 and his \$1,487.76 in
 19 expenses should be denied.

20 ILS Invoice # 3085 - \$5,573.78 (ECF No. 301-1, pages 53-56). Invoice # 3085 does not
 21 appear to have any entries that reference the Special Master proceedings. The entries appear to
 22 pertain to ESI hosting and other project management entries that relate to downloading and
 23 searching documents received in discovery. None of these tasks are addressed by Magistrate
 24 Judge Leen's Order (ECF No. 307). As such, it is Defendants' position that the entire amount of
 25 Invoice #3085 should not be included in the amount requested.

26 ILS Invoice # 3086 - \$8,592.50 (ECF No. 301-1, pages 57-58). Pixley – Relevant entries:
 27 6/25/14 (2.5 hrs) x \$350/hr = \$875.00. Forrest – Relevant entries: 6/19/14 (2.54 hrs), 6/26/14
 28 (2.12 hrs), 6/26/14 (.20) and 6/27/14 (.26 hrs) for a total of 5.12 hrs x \$350/hr = \$1,792.00.

1 ILS Invoice # 3098 - \$25,010.83 (ECF No. 301-1, pages 59-61). Pixley – Relevant entries:
 2 7/9/14 (3.5 hrs), 7/11/14 (.5 hrs), 7/19/14 (7.5 hrs), 7/21/14 (1 hr), 7/25/14 (.75 hrs) = 13.25 hrs x
 3 \$350/hr = \$4,637.50 in reasonable costs. Forrest – 7/2/14 (2.54 hrs), 7/3/14 (3 hrs), 7/9/14 (2.3
 4 hrs), 7/10/14 (.38 hrs), 7/19/14 (3.54 hrs), 7/25/14 (4.21 hrs), 7/28/14 (.38) for a total of 16.35 hrs
 5 x \$350/hr = \$5,722.50. Total reasonable costs = \$10,360.00.

6 ILS Invoice # 3128 - \$6,622.50 (ECF No. 301-1, pages 62-63). Forrest – Relevant entries:
 7 8/4/14 (4.47), 8/8/14 (1.54), 8/8/14 (1.40), 8/10/14 (.44), 8/11/14 (1.30), 8/15/14 (.11) for a total of
 8 9.26 hrs x \$350/hr = \$3,241.00.

9 ILS Invoice # 3156 - \$322.50 (ECF No. 301-1, page 64). This amount is relevant.

10 ILS Invoice # 3128 - \$2,429.17 (ECF No. 301-1, pages 65-66). None of the entries in this
 11 invoice appear to be related to the Special Master proceeding.

12 Based on Defendants' review of the expert billing records in Exhibit 3 to the Godino Decl.,
 13 only \$78,667.32 in costs billed by the experts would appear to be reasonable and related to the
 14 Special Master proceedings, not \$261,612.50. As such, the requests costs/expenses attributed to
 15 the experts should be reduced by -\$182,945.18.

16 **VI. Conclusion**

17 Plaintiffs' counsel's Revised Application seeks hundreds and hundreds of unnecessary
 18 hours based on duplication of efforts, poor balance of work assignments and work performed by
 19 more experienced attorneys that should have been performed by either less experienced attorneys
 20 or paralegals. While Defendants recognize that Magistrate Judge Leen has made her findings and
 21 authorized reasonable fees and costs as a result, Defendants should not be required to pay
 22 exorbitant rates for work that should have been performed in a much more efficient manner.
 23 Based on Defendants' review and calculations of the billing records and information provided by
 24 Plaintiffs' counsel, reasonable fees at reasonable rates for the District of Nevada based on
 25 Magistrate Judge Leen's Order (ECF No. 307) would be in the amount of \$330,672.40.

26 As for the expert costs, the majority of the costs sought to be recovered by Plaintiffs'
 27 counsel do not appear to be costs related to the Special Master hearings. Much of those costs
 28 appear to be related to analysis and storage of data that would have occurred regardless of the

1 Special Master proceedings. Based on Defendants' review and calculations of the billing records
 2 and information provided by Plaintiffs' counsel, reasonable costs based on Magistrate Judge
 3 Leen's Order (ECF No. 307) should be reduced by approximately \$183,000. The remaining costs
 4 attributed to duplicative travel by numerous partners to the same hearings is difficult to parse out
 5 from the lack of information provided by Plaintiffs' counsel as to their travel, lodging, etc. For
 6 purposes of this motion, all \$8,544.94 requested by Godino's firm for airfare, taxi and hotel is
 7 arguably duplicative, and should be denied, as should the \$1,769.66 requested by O'Mara.
 8 Accordingly, the \$324,548.33 in costs requested by Plaintiffs should be reduced by approximately
 9 \$200,000.00.

10 DATED this 28th day of August, 2016

11 LEWIS BRISBOIS BISGAARD & SMITH LLP

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 28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of August, 2018, I electronically filed the foregoing **DEFENDANTS UNIVERSITY MEDICAL CENTER OF SOUTHERN NEVADA AND JOHN ESPINOZA'S OPPOSITION TO PLAINTIFFS' REVISED APPLICATION FOR COSTS AND ATTORNEYS' FEES** with the Clerk of the Court through Case Management/Electronic Filing System, to be served to:

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By /s/ Tiffany Dube
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